

APPEAL NO. 022633  
FILED NOVEMBER 26, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 24, 2002. The hearing officer determined that the appellant (claimant) was not entitled to lifetime income benefits (LIBs) based on a "total and and permanent loss of use of both hands."

The claimant appeals "each and every" determination decided against her and asserts that a preponderance of the medical evidence was that she "has total inability to gain and retain employment." The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

The claimant has taken the position that she is entitled to LIBs under Section 408.161(a)(3) because she has "loss of both hands at or above the wrist." Subsection (b) provides: "For purposes of Subsection (a), the total and permanent loss of use of a body part is the loss of the body part." We have previously discussed this issue, stating as follows in Texas Workers' Compensation Commission Appeal No. 011034, decided June 26, 2001;

In Texas Workers' Compensation Commission Appeal No. 94689, decided July 8, 1994, we stated that the standard for determining whether a claimant is entitled to LIBS under the 1989 Act is the same as it was under the old law. Citing Travelers Insurance Company v. Seabolt, 361 S.W.2d 204, 206 (Tex. 1962), we noted that the test for **total loss of use** is whether the member (here the claimant's hands) possesses any substantial utility as a member of the body or whether the condition of the injured member is such that it keeps the claimant from getting and keeping employment requiring the use of the member. In Texas Workers' Compensation Commission Appeal No. 952100, decided January 23, 1996, we noted that the Seabolt test is disjunctive and that claimant need only satisfy one prong of the test in order to established entitlement to LIBS. See *a/so* Texas Workers' Compensation Commission Appeal No. 941065, decided September 21, 1994. [Emphasis added.]

In this case the hearing officer determined that the claimant "has some use of both her upper extremities," that the claimant has the ability to work at the modified sedentary physical demand level with restricted use of her bilateral upper extremities and that the claimant's compensable injury "is not such that she cannot get and keep employment." These factual determinations are supported by the evidence, which includes a functional capacity evaluation and two surveillance videos. We note that as

recently as March through mid-June 2001, the claimant had represented that she had made over 40 job contacts in an effort to qualify for SIBs for the 16th quarter.

After review of the record before us and the complained-of determinations, we have concluded that there is sufficient legal and factual support for the hearing officer's decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**COUNTY JUDGE (current judge)  
(ADDRESS)  
(CITY), TEXAS (ZIP CODE).**

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Margaret L. Turner  
Appeals Judge